

Informal translation of the reading out of the summary of verdict of the District Court of the Hague, in the case of Urgenda and 886 citizens against the Dutch State, as read out on 24 June 2015, 10:00 (CET)

The official press release and full verdict in English is available here:

<https://www.rechtspraak.nl/Organisatie/Rechtbanken/Den-Haag/Nieuws/Pages/State-ordered-to-further-limit-greenhouse-gas-emissions.aspx>

Welcome to this session of the court, in the same composition in which we heard this case, for the verdict in the case of Urgenda vs. the State.

What I'm going to read to you shortly, is a summary of the whole verdict, which is considerably more extensive than the text which you are going to hear.

In the coming rendition, we will occasionally be much more concise in our wording, and sometimes not use the exact wording of the verdict.

This is for the sake of comprehensibility today.

There is only one official text, and that is the text of the verdict which will be published online today.

Then I will now start reading out the verdict.

First of all the motivation, then the decision.

This case, in essence, is about the question whether Urgenda can force the State to limit the emission of greenhouse gasses, CO₂ in particular, further than the intentions of the Dutch government.

Urgenda's claims raise difficult and all-encompassing climate-technical questions. The court does not have its own expertise in this field.

It is relying on the facts, regarding which both parties are in agreement.

This includes the current scientific consensus, as well as other facts that the State has acknowledged, or considers to be true.

The first part of the court's judgement states that Urgenda, insofar as it is representing itself, has standing .

This means that Urgenda is in the position to bring this case before the court.

The court can therefore judge this case in its entirety.

The court subsequently sees three main questions in this case, which I shall read out.

The first question: how serious is the problem? What is the scope of the stated danger of climate change?

The second question: does the state have a legal duty towards Urgenda, with regards the stated dangers of climate change, to achieve additional emission reductions.

And the third main question, which will be dealt with if question 2 is answered affirmatively, is this a case which belongs in the courtroom?

As far as the first question, regarding the severity of the climate change problem, the court's judgement is as following:

In climate science, it has been widely accepted since at least 2007, that the emission of greenhouse gasses by humans, especially CO₂, through the burning of fossil fuels, such as coal, oil and gas, makes it highly probable that dangerous climate change will occur within several decades, with irreversible and grave consequences for people and the environment.

This climate change will occur in the case of a global temperature rise of more than two degrees Celsius compared to the baseline year 1850.

The danger consists of, among other things, in that the sea levels will rise, that the deserts will expand, and that many species will go extinct from the heat.

For humans, this will lead to deterioration of the food production, and increased heat related mortality, especially among the elderly and children.

Because of the rise in sea level, and increased river discharge, dangerous situations will become more common in the Netherlands as well.

There will also be a higher risk of salinization in the coastal zones, and a decrease in the availability of fresh water suitable for agriculture.

In order to prevent a rise in temperature of more than two degrees, a worldwide reduction, mitigation, of greenhouse gasses is needed.

It has been accepted by science that if the concentration of greenhouse gasses in the atmosphere stabilizes around at what is referred to as the 450 ppm level, there will be at best a reasonable chance, 66%, that the 2 degree scenario will be achieved.

For the sake of convenience, I will now leave out the technical description of what the 450 level consists of.

From these scientific conclusion follows that the industrialized countries, referred to as Annex 1 countries in the sense of the UNFCCC, including the Netherlands, need to have reduce their emissions by 25-40% by 2020, compared to 1990.

It's a fact that worldwide emissions are still increasing and that the planned targets will not be met.

Under the given circumstances, it is a fact that there will be dangerous climate change.

The Netherlands has accepted the two degree target.

With the current targets for 2020, the reduction in the Netherlands will come out to a maximum of 17%, and therefore below the 25-40% target deemed necessary by climate scientists and the international climate policies.

The conclusion of the court, with regards to the first main question, is therefore that this is a serious problem and that a worldwide reduction of emissions is necessary in order to prevent irreversible climate change.

From a scientific perspective, it is necessary for the Netherlands, as an industrialized country, to reduce 25-40% of its CO₂ emissions by 2020, compared to 1990 levels.

Then the second main question, which considers the potential legal obligation that the State has towards Urgenda.

The court will answer this question, according to what is referred to as the open norm of Article 162 from Book 6 of the Civil Code, the unlawful act.

Herein, the court takes into consideration the policy freedom which belongs to the State and its agencies, in determining and implementing government policies, also with regards to climate.

The court recognizes that individuals, such as those who Urgenda is representing, as well Urgenda itself, cannot directly call on the international environmental treaties which are relevant here.

For example, the previously mentioned UNFCCC.

Urgenda can also not call directly on Articles 2 and 8 of the European Convention of Human Rights.

However, international obligations of the State, other treaty provisions, and guidelines by the European Union and the principles that lay at its foundation, can indeed play a role in filling in the open norm of Article 162 of Book 6 of the Civil Code.

In this context the principle of endangerment also plays a role.

What does the State need to do to turn around the impending danger?

The principles that are at play here are amongst others those that are laid down in article 3 of the UNFCCC, namely the equity principle, the precautionary principle, and the sustainability principle.

The equity principle states, among other things, that extra effort is asked of countries that have up until now been responsible for most greenhouse gas emissions, and have profited the most from this.

In addition, it follows from the equity principle that future generations need to be taken into account.

Article 191, paragraph 2 of the Treaty on the Functioning of the European Union (TFEU), also contains a number of principles that are important in this case.

Such as the principle of a high protection level, and again, the precautionary principle.

In short: prevention is better than cure.

The State rightfully points out that it is not the actual (co-)causer of the emissions, but that is not decisive.

First of all, on the grounds of Article 21 of the Constitution, the state has a duty to safeguard the protection and the improvement of the living environment.

A duty to protect therefore.

Secondly, it is also within the power of the State to effectively exert control over the Dutch emission levels.

The State therefore plays a crucial role in the transition to a sustainable society.

It is also not decisive that reduced emissions in the Netherlands have only a small effect on global emissions.

After all, all emissions contribute to the total increase of CO₂ concentration, and not a single country, small or large, can hide behind the argument, that their efforts alone, will not determine whether dangerous climate change is to be averted.

In addition, the Netherlands, as an Annex 1 country, is one of the countries that should be leading the way.

From the debates held in this case, and the scientific reports endorsed by the State in a general sense, the court has deduced that a reduction target of 25-40% by the end of 2020, compared to 1990, are from a cost perspective, not impossible nor reasonably unacceptable.

Precautions that will have this effect, are therefore not unduly burdensome on the State.

The severity and the extent of the climate problem make it necessary, also given the fact that other solutions to the problem are still lacking, to take short-term mitigation measures and to not wait for measures that will not have an effect until later.

The discretionary power of the State to fulfill its public duties does not significantly alter this fact.

Because after all, as the impending danger becomes larger and more restrictive, that discretionary power will become smaller.

And the nature and extent of this danger is severe.

So to what necessary reduction will that lead us in this case?

The court has taken into account the hard targets, which have been previously endorsed by the Netherlands.

But they also have to respect the freedom of the state to make its own policy considerations.

In this situation, the court considers that within the mentioned range of 25-40%, a reduction to the lower boundary is the minimum that in principle is required.

This comes down to an emission reduction of at least 25% by 2020 compared to 1990.

The court has determined that the Netherlands' obligations within the context of the European Union, based on the ETS regulations on trade and emission rights, should not lead to another judgment.

This regulation does not, according to the judgment of the court, stand in the way of taking further reduction measures.

Other EU countries that are also bound to these regulations, such as Germany, the United Kingdom, and Denmark, have accepted targets in their national policies that surpass the percentages proposed to them in the context of the EU.

It is also not at all certain, that stricter climate policies will seriously harm our competitive position, or to companies leaving, or that it would have an insufficient effect in a European or international context, supposed dangers that the State put forward in its defense.

But even if this were the case, these grounds are insufficient to assume that the Netherlands is not neglecting its duty of care.

The court is answering the second main question, which was stated earlier, as follows:

The state has in principle, not taking into consideration the answer to the third question still to be discussed, a legal obligation towards Urgenda to make sure that emissions in the Netherlands will be cut by at least 25% compared to 1990 by the end of 2020.

In other words, reductions lower than 25% would be unlawful towards Urgenda.

That brings me to the third question in this case, which is about the separation of powers within the State, also called the trias politica.

For many, the question will arise whether this matter is suited to be decided by a non-elected judge.

The state has argued that this is essentially a political matter that, in this form, does not belong in the court room.

The court's consideration is the following:

Dutch law doesn't know an absolute separation of powers, in this case between the executive branch and the judicial branch.

It is better to say that there is a division of responsibilities, between these two branches and the legislative branch, with the goal to achieve a balance between these powers.

In a general sense, none of these branches has precedence over the others.

These branches do have their own assignments and their own responsibilities.

The court offers judicial protection and decides in legal disputes.

The court is in fact required to do this, if this is requested to do so.

It is an important characteristic of a state governed by the rule of law that even independent, democratically legitimated and controlled political institutions, can, and sometimes even must, be judged by an independent judiciary.

A judge cannot enter into the political domain, with its corresponding considerations and choices.

He must, independently of any political agenda, restrict himself to his domain, the application of the law.

The court is able to rule in this case, on grounds of the legal responsibility of the court to offer judicial protection against imminent unlawful behavior, also in cases against the government.

The court does need to exercise restraint, if the court order would lead to policies with consequences for third parties, which are difficult for the court to oversee.

But it is here also the case that, since the severity of the danger increases the legal duty of the government, there are also fewer reasons for such restraint by the court.

However that may be, the exercise of restraint does form an additional reason to minimize the reduction to at least 25%.

The answer of the court to the third main question is therefore, that the trias politica is not a decisive counterargument.

The court has now answered the three main questions, and on this basis has answered the three separate claims.

The requested declaratory judgements cannot be granted.

Urgenda does not have an independent interest there, because it is in essence about the reduction levels, and this has, as has been said, been granted for at least 25%.

Urgenda's claim with regard to certain means of publication of the verdict, the order to inform, will not be granted.

Given the result of the Urgenda's case, the 886 individual people on whose behalf Urgenda is also acting, do not have a sufficient personal interest in this case.

The trial costs will be covered by the State.

In budgeting these costs, the court has deviated from the usual rate for legal fees.

The court is doing this, because this is a complicated case, in which large social and financial interests were covered.

The court will apply the maximum lump sum fee.

The decision will be as follows:

The court is ordering the State, in response to Urgenda's claim insofar as it is representing itself, to reduce the collective volume of the annual Dutch greenhouse gas emissions, or have them reduced, in such a way that by the end of 2020, this volume will be reduced by at least 25%, compared to 1990 levels.

The court is demanding that State to cover the trial costs of Urgenda, representing itself, and has budgeted these costs at 13.521 euros and 82 cents, to be multiplied by the legal interest rate, starting 14 days after this verdict.

This verdict is enforceable from the day of its publication.

Other costs will be compensated in so far that parties will cover their own costs, and any additional or other claims have been rejected.

I have now given, in short, the considerations of the court, and the decision.

This is where we are going to end the public session.

It has already been said that there are a limited number of copies of the entire verdict available.

So this is where I'm going to for now.